

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO; PAYTON GREY
MCGARRY; HUNTER SCHAFER;
MADELINE GOSS; ANGELA GILMORE;
QUINTON HARPER; and AMERICAN
CIVIL LIBERTIES UNION OF NORTH
CAROLINA,

Plaintiffs,

v.

UNIVERSITY OF NORTH CAROLINA; and
PETER HANS, in his official capacity as President
of the University of North Carolina;

Defendants,

PHIL BERGER, in his official capacity as
President Pro Tempore of the North Carolina
Senate; and TIM MOORE, in his official
capacity as Speaker of the North Carolina
House of Representatives,

Intervenor-Defendants.

No. 1:16-cv-00236-TDS-JEP

JOINT STATUS REPORT

Pursuant to the Court’s order on December 17, 2020, that “the court’s order of stay ... is lifted” and “that the parties meet and confer within 14 days and endeavor to reach an agreement as to how they propose to proceed with the unresolved portion of this litigation,” (D.E. 305 at 1-2), the Parties hereby submit this joint status report.

1. The remaining Parties in this case are Plaintiffs Joaquín Carcaño, Payton Grey McGarry, Hunter Schafer, Madeline Goss, Angela Gilmore, Quinton Harper, and American Civil Liberties Union of North Carolina (“Plaintiffs”); Defendants University of North Carolina and

Mr. Peter Hans¹ in his official capacity as the President of the University of North Carolina (“UNC Defendants”); and Intervenor-Defendants Phil Berger, in his official capacity as President Pro Tempore of the North Carolina Senate; and Tim Moore, in his official capacity as Speaker of the North Carolina House of Representatives (“Intervenor-Defendants”).²

2. In a September 2018 memorandum opinion, this Court granted the UNC Defendants’ and the Intervenor-Defendants’ motions to dismiss except as to: (1) Plaintiffs’ contingent claims involving HB 2, alleging violations of equal protection, the right to privacy, and liberty and autonomy in the right to refuse unwanted medical treatment (Counts 3, 4, and 5); and (2) Plaintiffs’ Title VII and Title IX nominal-damages claims for the period HB 2 was in force (Counts 6 and 7).³ (D.E. 248 at 3-4.) The court reserved ruling on Plaintiffs’ Title VII and Title IX nominal-damages claims pending supplemental briefing on those claims. In November and December of 2018, the UNC Defendants, the Intervenor-Defendants, and Plaintiffs filed additional briefing on the motions to dismiss the Title VII and Title IX nominal-damages claims. (D.E. 254, 255, 258, 261, 262).

¹ Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, “when a public officer who is a party in an official capacity . . . ceases to hold office while the action is pending . . . [t]he officer’s successor is automatically substituted as a party.” Peter Hans became the President of the University of North Carolina on August 1, 2020, succeeding interim President Dr. William Roper; as such Peter Hans is automatically substituted for Dr. Roper as the Defendant in this suit.

² On July 23, 2019, this Court entered a Consent Judgment and Decree between the Plaintiffs and the Executive Branch Defendants and dismissed all claims against the Executive Branch Defendants. (D.E. 296)

³ In its September 2018 memorandum opinion, the Court also denied the Intervenor-Defendants’ motion to dismiss as to Plaintiffs’ equal protection claims against the Executive Branch Defendants based on the preemption provision in Section 3 of HB 142 (Count 2). These claims were subsequently dismissed upon the Court’s entry of the Consent Judgment and Decree between the Plaintiffs and the Executive Branch Defendants.

3. In a May 20, 2019 order, this Court stayed all litigation pertaining to Plaintiffs' remaining Title IX and VII claims pending the Supreme Court's resolution of *Bostock v. Clayton County, Ga.*, No. 17-1618; *Altitude Express, Inc. v. Zarda*, No. 17-1623; and *R.G. & G.R. Harris Funeral Homes, Inc. v. E.E.O.C.*, No. 18-107. (D.E. 286) The Supreme Court has now ruled on these cases. *See Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731 (2020).

4. Currently pending before the Court are the UNC Defendants' and the Intervenor-Defendants' motions to dismiss the Plaintiffs' Title VII and Title IX nominal-damages claims. Since the Court's December 17, 2020 Order, the Parties have been in discussions regarding next steps in this litigation and jointly propose that the above-captioned matter remain stayed until February 1, 2021, so that the Parties may continue their discussions in an effort to reach agreement as to how to proceed with the remaining portions of this litigation. The Parties further propose that they file a further status report by February 1, 2021 regarding their positions on how the above-captioned matter should proceed, including a proposed schedule if appropriate.

Dated: December 30, 2020

Respectfully submitted,

/s/ Irena Como

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CERTIFICATE OF SERVICE

I, Irena Como, hereby certify that on December 30, 2020, I electronically filed the foregoing JOINT STATUS REPORT, using the CM/ECF system, and have verified that such filing was sent electronically using the CM/ECF system to all parties who have appeared with an email address of record.

/s/ Irena Como

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